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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/710,288	11/10/2000	Barry M. Thompson	6338.10	5016

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EXAMINER

TRUONG, LINH T

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 10/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/710,288	Applicant(s) THOMPSON ET AL.	
	Examiner Linh Truong	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 18-48 is/are rejected.
- 7) ☒ Claim(s) 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> . | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Response to Amendment

The indicated allowability of claim 9 is withdrawn in view of the newly discovered reference(s) to an evacuation apparatus with a surgical drape operably connected to it. Rejections based on the newly cited reference(s) follow.

Claim Objections

✓ Claim 21 is objected to because of the following informalities: "aid source of ultra-clean air" should be changed to "said source of clean air". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-13, 16, 18-36, and 41-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For claims 1-13, 16, 18-36, and 41-48, the phrase, "said plenum having a generally open facing..." is indefinite. It is not clear how the applicant is describing the plenum, most structures have an open facing. Applicant should be more specific.

✓ Claim 3 recites the limitation "said manifolds." There is insufficient antecedent basis for this limitation in the claim.

✓ For claims 9, 32, and 44, the term "fabric-like" is indefinite. Examiner suggests that applicant use just "fabric".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7, 8, 11, 14, 15, 16, 19, 28, 31, 32, 34, 37, 39, 41, and 46 are rejected under 35 U.S.C. 102(b) as being unpatentable by Olson '4,692,140.

For claims 1, 7, 8, 14, 15, 16, 19, 28, 37, 39 and 41, Olson teaches a lavage/ suction tip comprising of a plenum operatively coupled to a vacuum (57) and a fluid (58) source with a central opening (49) (with a 360 degree arc over a surgical site), the inner periphery of the plenum is adjacent to its open facing, and a plenum support (30) (column 4, lines 40-44). Olson also teaches that the actuation of the vacuum source (when plenum will contain fluid flow) and fluid source inherently produces a laminar flow of fluid, where the inflow of the vacuum source is equal to an outflow of the source of fluid.

For claims 11, 34, and 46, Olson teaches a lavage/ suction tip inherently made out of a non-porous (impermeable to fluids) material for providing and removing fluids from the surgical site.

For claims 7 and 31, Olson teaches a lavage/ suction tip with a fluid source that is inherently particle-free because it is used in surgical sites where contamination is dangerous.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 32, and 44, are rejected under 35 U.S.C. 103(a) as being unpatentable over Olson '4,692,140 in view of Reimels et al. '4,764,165.

For claims 9, 32, and 44, Olson teaches a lavage/ suction tip comprising of a plenum operatively coupled to a vacuum (57) and a fluid (58) source with a central opening (49) (with a 360 degree arc over a surgical site), the inner periphery of the plenum is adjacent to its open facing, and a plenum support (30) (column 4, lines 40-44). Olson also teaches that the actuation of the vacuum source (when plenum will contain fluid flow) and fluid source inherently produces a laminar flow of fluid, where the inflow of the vacuum source is equal to an outflow of the source of fluid. Olson, however, does not teach a piece of fabric material operably coupled to the evacuation apparatus. Reimels et al. teaches an aspirator-irrigator with this limitation (figure 5 and column 4, lines 26-27). Therefore it is obvious to one with ordinary skill in the art at the time the invention was made to provide the invention of Olson with a drape operably coupled to the evacuation apparatus for the covering, and thus, maintaining sterility of the surgical site.

Allowable Subject Matter

Claims 2-6, 10, 12, 13, 18, 20, 22-27, 29, 30, 33, 35-36, 38, 40, 42-43, 45 and 47, would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claim 17 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linh Truong whose telephone number is (703) 605-4974. The examiner can be normally reached on Monday through Friday from 8:00 AM-5:30 PM.

Linh Truong

L.T.



Aaron J. Lewis
Primary Examiner